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BEFORE THE  
FEDERAL MARITIME COMMISSION

NOV 18 2016

DOCKET NO. 15-11

Federal Maritime Commission  
Office of the Secretary

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

MICHAEL HITRINOV a/k/a  
MICHAEL KHITRINOV,  
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

MICHAEL HITRINOV a/k/a  
MICHAEL KHITRINOV,  
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.

COMPLAINANTS' RESPONSE TO MOTION TO WITHDRAW OF ERIC C. JEFFREY,  
ESQ. AND NIXON PEABODY LLP

Complainants, through their Counsel, Marcus A. Nussbaum, Esq. hereby respond to the motion by Eric C. Jeffrey, Esq. and Nixon Peabody LLP for leave to withdraw as counsel for respondents Michael Hitrinov a/k/a Michael Khitrinov ("Hitrinov") and Empire United Lines Co., Inc. ("EUL").

RELIEF REQUESTED

Respondents' counsel, by Eric C. Jeffrey, Esq. ("Jeffrey") and the law firm of Nixon Peabody LLP have moved the Presiding Officer for an Order granting leave to withdraw as counsel for respondents Hitrinov and EUL.

Notably, and in so doing, counsel has sought *neither* attorneys fees *nor* costs associated with their prior representation of respondents.

Neither has said counsel requested a Stay of Proceedings in order to afford respondents any reasonable period of time within which to retain new counsel, should respondents elect to do so.

For reasons set forth below, the motion of Jeffrey and his firm to withdraw should be denied in its entirety.

### **PROCEDURAL HISTORY**

This matter was initiated by the filing and service of a Complaint against respondents Hitrinov and EUL on or about November 7, 2015.

Following joinder of issue hereon, Jeffrey and his firm have resorted to every possible contrivance for the purpose of stalling, delaying, and preventing expeditious litigation of complainants' pending claims for no other reason than to vex, annoy, harass, and intimidate complainants and their counsel, and to unnecessarily multiply litigation of this matter in the form of countless motions, spurious 'Status Reports', and unending letters to the Presiding Officer and the Commission. Most recently, said efforts included a personal, retributive, and punitive attempt to have complainants' counsels' ability to practice before the Commission, "revoked" interposed solely by and exclusively on behalf of Jeffrey personally, and not on behalf of or with the knowledge and consent of his client, Hitrinov with whom Jeffrey purports to have ceased communicating with.

With particular regard to the latter, and in lieu of filing and serving a 'Reply' on Jeffrey's latest outrageous motion, Jeffrey has instead 1) falsely represented that said motion is "fully briefed"; and 2) attempted to 'cut and run' while leaving his clients defenseless absent even a request for a Stay of Proceedings so as not to unduly prejudice his own clients in favor of

“feathering his own nest” and that of his firm, resulting in complainants’ instant response to said motion.

### **BRIEF STATEMENT**

At the outset and most glaringly, it is noted that in the veritable same breath as decrying an inability to communicate with his own client; specifically, by averring that “[r]ecent emails to [his] clients have gone without response...”, Jeffrey makes a feckless attempt to serve his own client at the same purportedly nonresponsive email address. It is respectfully submitted that the foregoing constitutes a fatal defect to Jeffrey’s motion in the form of inadequate and impotent indicia of proper and lawful service of Jeffrey’s motion to be relieved upon his own client.

Indeed, and in an obvious attempt to avoid “letting the door hit him on the way out” in his breathtaking alacrity to absolve himself of his duties to his own client pursuant to the Code of Professional Responsibility and Canons of Ethics, Jeffrey has not even the foresight or presence of mind to request a Stay of Proceedings in order to afford his own client reasonable time to retain new counsel.

It is respectfully submitted that considering Jeffrey’s self-vaunting as an attorney of renown, it is inconceivable that even a first-year junior associate would expose his own client to the massive litigation now pending in this matter without representation. Consistent with Jeffrey’s long and demonstrated history of lies, misrepresentations, and deceitful methods of litigation practices, it is presumed that Jeffrey’s instant application is a complete *sham*, and that Jeffrey and Hitrinov have already conspired for Hitrinov to retain new counsel; and that Hitrinov will magically “reappear” with new counsel shortly following Jeffrey’s otherwise abrupt and precipitous abandonment of his client and abdication of his duties and responsibilities to same.

In lieu of discharging his fiduciary responsibilities to his own client, Jeffrey instead makes half-hearted and mealy-mouthed representations that proceedings in this matter are allegedly at a

“pause...with nothing required to be filed by either side”. Needless to say, and consistent with the majority of Jeffrey’s representations to the Commission, the foregoing is patently *false*.

Specifically, and as Jeffrey is well aware having interposed a Motion for Judgment on the Pleadings, the Presiding Officer recently enunciated during a telephone conference held on October 5, 2016 that he would be requesting further information and argument from the parties in the form of additional inquiries by the Presiding Officer which as of the time of this writing have not yet even been received, let alone responded to. Also outstanding remains the issue of a pending subpoena for materials which respondents have refused to produce, awaiting being “So-Ordered” by the Presiding Officer; a pending motion against respondents to compel the production of shipping documents; and a motion by respondents to strike alleged “fraudulent” documents, all of which are awaiting imminent decisions by the Presiding Officer, along with multiple other motions interposed by non-party Kapustin, also awaiting imminent decisions by the Presiding Officer.

Notwithstanding Jeffrey’s gross and undeniable abuses of the discovery process as an attempt to stall expeditious litigation of this matter, it is difficult if not impossible to comprehend how, or in what way when considering the plethora of pending motions, that there exists any “pause” in the proceedings herein, let alone a sufficient time period for respondents to retain new counsel, should they elect to do so.

Based upon the foregoing, together with the arguments set forth below, it is respectfully submitted that it would be an improvident exercise of the Presiding Officer’s well-founded discretion to allow Jeffery to ‘cut and run’ leaving his clients ‘hanging’ to their own undeniable detriment and prejudice which would result from Jeffrey’s precipitous abandonment of his clients and his filial responsibilities as an Officer of the Court, and further unnecessarily delaying expeditious litigation of complainants’ claims to complainants’ obvious and continuing prejudice and detriment.

## ARGUMENT

### Standard of Review

Rule 23 of the Commission's Rules of Practice and Procedure ("RPP") states in relevant part, as follows:

If an attorney wishes to withdraw from representing a party, and written consent is not obtained, or if the party is not otherwise represented, the withdrawing attorney shall file an appropriate motion seeking permission to withdraw and provide appropriate reasons for making the motion. Such motion will be decided in consideration of the factors and standards set forth in Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct and by the courts.

Rule 1.16 of the American Bar Association's Model Rules of Professional Conduct (the "Rules of Conduct") states in relevant part, as follows:

A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

Rule 1.16 of the Rules of Conduct additionally states in relevant part, as follows:

A lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (7) other good cause for withdrawal exists.

As is plainly evident from a reading of the above, *none* of the grounds set forth above have been established, let alone proven, in Jeffrey's 'throwaway' cursory application to the Presiding Officer to be relieved as counsel.

While complainants acknowledge Jeffrey's 'half-hearted' attempt to obtain his requested relief under subsection "5" of Rule 1.16 of the Rules of Conduct cited above, it is respectfully submitted that Jeffrey has abjectly *failed* in his two-page motion to set forth *any* of the following: 1) any retainer agreement or other documentary evidence or proof of any alleged financial "obligation(s)" of the respondents to Jeffrey and his firm; 2) any alleged billing which was purportedly sent by Jeffrey to his clients which allegedly remains unpaid, inclusive of any efforts to collect on such billing or warnings of withdrawing from the case unless such obligations were satisfied; 3) any records or indicia of *any* payments made by respondents to Jeffrey or his firm to substantiate any alleged financial "obligation(s)" beyond a mere contingency fee; 4) *any* indicia of attempts by Jeffrey or his firm to have his clients satisfy such alleged obligations by so much as a single letter or email annexed to Jeffrey's cursory motion papers, inclusive of evidence of any returned mail, receipts of certified mail, attempted personal delivery, or telephonic communications, or evidence of purportedly returned electronic mail. It is respectfully submitted that having abjectly *failed* to provide the Presiding Officer with *any* indicia or showing of such alleged financial "obligation(s)" which purportedly remains unsatisfied, the foregoing cannot

serve as recognized grounds under the Model Rules cited above to warrant the granting of Jeffrey's plea to be relieved of his obligations to respondents, nor those of his firm.

Least Jeffrey disingenuously attempt to justify "leaving his clients in the lurch" by reason of an alleged "financial burden" which would result on Jeffrey and his firm, it is respectfully submitted that any suggestion that a law firm with over 400 attorneys in the United States and abroad would suffer any unreasonable financial burden from the pissant obligation(s) allegedly unsatisfied by respondents, other than for purposes of entertainment value, is patently absurd.

### **Jeffrey's Unclean Hands**

#### *Jeffrey's Knowledge and Notice of Hitrinov's Payment Practices*

It is respectfully submitted that respondent Hitrinov is renowned for "stiffing" his attorneys by refusing to pay outstanding bills for services provided. Indeed, and as of the time of this writing, Hitrinov has been and continues to be involved in a multiplicity of litigations before the Commission and the Federal Courts. Notable amongst Hitrinov's many Court cases is a matter previously pending before the Presiding Officer where Hitrinov's counsel therein, Gerard S. Doyle, Esq. is presently engaged in desperate attempts to recover attorneys fees unpaid by Hitrinov to the point that said counsel has actually opposed discontinuance of the matter over the issue of Hitrinov's unpaid bills. Additionally, a similar if not identical situation existed in a separate matter previously pending before the U.S. District Court for the District of New Jersey wherein Hitrinov, represented by one Jon Werner, Esq. who has repeatedly sought to insert himself and interfere with the orderly prosecution of complainants' instant claims herein was, upon information and belief, similarly *stiffed* by Hitrinov.

It is respectfully submitted that Jeffrey thus either knew, or should have known about Hitrinov's "payment practices" at the time that Hitrinov engaged Jeffrey and his firm and thus took on such representation knowingly, and at his own peril to the point that Jeffrey should not now be

permitted to blink 'cow's eyes' at the Presiding Officer in innocent protestation of his client's "payment practices" to the extent that same would warrant relieving Jeffrey and his firm from their representation of Hitrinov upon ground of being "surprised" by his client's reticence to pay his bills, albeit manifestly unproven by Jeffrey in his motion papers.

Accordingly, and based upon the foregoing, it is respectfully submitted that Jeffrey has abjectly *failed* to make *any* good cause or prima facie showing of entitlement to being relieved of the representation of respondents herein by Jeffrey and his firm.

*Jeffrey's Motion to Revoke the Ability of Complainants' Counsel to Practice Before the Commission Should Be Denied, or in the Alternative, Deemed Withdrawn or Abandoned Upon Jeffrey's Withdrawal From the Case*

It is respectfully submitted that Jeffrey's pending motion to revoke complainants' counsel's ability to practice before the Commission, having been *personally* brought by and *solely* on behalf of Jeffrey and *not* on behalf of his client should be denied, or deemed withdrawn or abandoned upon any withdrawal by Jeffrey and his firm from this case.

First, it is noted that said motion was interposed retributively, punitively, and *solely* by Jeffrey, absent the knowledge and consent of his client, Hitrinov as evidenced by Jeffrey's failure to include an affidavit from Hitrinov with whom Jeffrey now professes to have ceased communicating with. Accordingly, it is respectfully submitted that said motion should be "marked off", dismissed, or otherwise deemed withdrawn or abandoned as having been made exclusively on behalf of Jeffrey and his firm *personally*, and *not* to represent or further the interests of his clients. Alternatively stated, if Jeffrey and his firm are to *go*, their punitive, retributive, and personal application against complainants' counsel should and must *go* with him.

As to the balance of the many pending motions before the Presiding Officer and the Commission, and in light of the fact that Jeffrey has requested *no* stay and allowed *no* time for his clients to retain new counsel, the balance of said pending motions which arguably seek relief on



behalf of the respondents, as opposed to their feckless counsel, should be decided at the Presiding Officer's earliest convenience, absent any adjournment of same.

Notwithstanding the foregoing, and should the Presiding Officer nonetheless deign to grant Jeffrey's instant motion, it is respectfully submitted that if Jeffrey and his firm are to be permitted to withdraw as counsel for the respondents in this matter that appurtenant to said withdrawal, Jeffrey's pending motion to revoke the ability of complainants' counsel to practice before the Commission must be denied or deemed withdrawn or otherwise abandoned.

*Jeffrey's Failure to Request a Stay or a Period Certain for Hitrinov to Appear With New Counsel or Pro Se Prejudices Complainants*

It is respectfully submitted that as even Jeffrey is surely aware, it is common and accepted practice when withdrawing from a case that any Order regarding same include a provision for a stay of proceedings for a time period certain with an 'end date' by which the unrepresented party must either appear with new counsel or pro se, upon penalty of having a default judgment entered against them. In a continuing demonstration of deceitful and bad faith litigation practices, Jeffrey has cannily refrained from requesting such a period certain or 'end date'. Accordingly, it is respectfully submitted that should the Presiding Officer deign to grant Jeffrey's instant motion to withdraw that any resultant Order must contain a time period certain for respondents to either appear with new counsel or to continue pro se; and that any failure to do so will be grounds for the Presiding Officer to issue an Order to Show Cause as to why a default judgment should not be entered against respondents.

**CONCLUSION**

As set forth above, Jeffrey's instant motion should be summarily denied upon ground of having abjectly *failed* to demonstrate "due diligence" with respect to any legitimate and good-faith

effort to *either* communicate with his client prior to resorting to his instant motion, *or* as to having achieved and demonstrated proper service of said motion upon his clients.

Should the Presiding Officer nonetheless find that in spite of the foregoing, due diligence was made and service was properly affected, Jeffrey's motion should still be denied in its entirety.

Jeffrey has abjectly *failed* to set forth or demonstrate how *any* of the criteria and grounds for being relieved of representation by an attorney have been achieved or satisfied within his two-page motion.

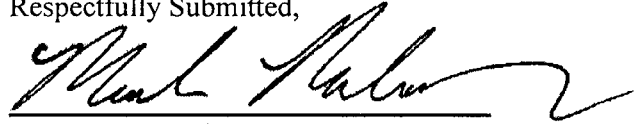
Further, Jeffrey has taken the incredible position in the face of multiple pending motions awaiting imminent decision, including but not limited to substantive relief, that proceedings are somehow at a standstill to the point that Jeffrey and his firm should be permitted to 'cut and run' absent giving their clients any reasonable time period to retain new counsel, should they elect to do so, to his clients' undeniable prejudice and detriment, thus unethically putting the interests of himself and his firm above those of his clients.

For all these reasons, together with the arguments set forth above, it is respectfully submitted that Jeffrey's instant motion that he and his firm be relieved of representation of the respondents in this matter should now be denied, in its entirety.

In the alternative, and should the Presiding Officer nonetheless grant Jeffrey's instant motion, it is respectfully submitted that appurtenant to said withdrawal should be the denial or deemed withdrawal or abandonment of Jeffery's personal motion to revoke the ability of complainants' counsel to practice before the Commission, as well as a provision setting forth a time period certain for respondents to either appear with new counsel or to continue pro se upon penalty of an Order to Show Cause as to why a default judgment should not be entered should respondents fail to timely appear on said 'end date', with or without new counsel.

Dated: November 17, 2016  
Brooklyn, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
Tel: 888-426-4370  
Fax: 347-572-0439  
Attorney for Complainants  
marcus.nussbaum@gmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the **COMPLAINANTS' RESPONSE TO MOTION TO WITHDRAW OF ERIC C. JEFFREY, ESQ. AND NIXON PEABODY LLP** upon Respondents' Counsel at the following address:

Nixon Peabody LLP  
Attn: Eric C. Jeffrey, Esq.  
799 9th Street NW, Suite 500  
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
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Tel: 888-426-4370  
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Attorney for Complainants  
marcus.nussbaum@gmail.com

Dated: November 17, 2016 in Brooklyn, New York.

**MARCUS A. NUSSBAUM, ESQ. RECEIVED**

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OFFICE OF THE SECRETARY  
FEDERAL MARITIME COMMISSION

November 17, 2016

Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573  
Attn: Office of the Secretary  
Attn: Rachel E. Dickon, Assistant Secretary

Re: *Igor Ovchinnikov, et al, v. Michael Hitrinov a/k/a Michael Khitrinov, et al.*  
FMC Docket 15-11

*Kairat Nurgazinov, v. Michael Hitrinov a/k/a Michael Khitrinov, et al.*  
FMC Informal Docket 1953(I)

Dear Ms. Dickon:

I represent the Complainants in the above referenced matters.

Enclosed please find an original and five copies of Complainants' Response to Motion to Withdraw of Eric C. Jeffrey, Esq. and Nixon Peabody LLP.

Respondents have been additionally served herein via First Class Mail.

We thank the Commission for its continued courtesy and consideration.

Respectfully Submitted,



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Fax: 347-572-0439

Attorney for Complainants

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